IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

PEGGY SIMPSON, Plaintiff, vs. IOWA HEALTH SYSTEM, ST. LUKE'S HEALTH SYSTEM, ST. LUKE'S REGIONAL MEDICAL CENTER, GRANDVIEW HEALTH RESOURCES, INC., GARY JOHNSON, and WENDY VAN HATTEN, Defendants.	No. C00-4141-MWB **ORDER REGARDING DEFENDANTS' MOTION TO DISMISS**

I. INTRODUCTION AND FACTUAL BACKGROUND

A. Procedural Background

Plaintiff Peggy Simpson filed this disability discrimination lawsuit on October 24, 2000, against her former employers and supervisors, defendants St. Luke's Health System, St. Luke's Regional Medical Center, Grandview Health Resources, Inc., Gary Johnson, and Wendy Van Hatten. Simpson was employed as a registered nurse. Simpson alleges in her complaint that she suffers from a disability or is perceived as having a disability and that she was discharged from her employment because of her disability or perceived disability. On November 13, 2000, plaintiff Simpson filed an Amended Complaint and on February 8, 2001, Simpson filed a Second Amended Complaint. In her Second Amended Complaint, Simpson asserts a federal claim for violations of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, as well as a pendant state law claim for violation of Iowa Code Ch. 216, the Iowa Civil Rights Act ("ICRA").

Defendants have moved to dismiss Simpson's disability discrimination claims. In their motion to dismiss, defendants assert that the Second Amended Complaint, when read in its entirety, fails to state a claim upon which relief can be granted because Simpson has failed to allege a specific impairment which she suffered or was perceived to suffer, and has failed to allege, or allege facts sufficient to show, that she suffers from "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." *See* 42 U.S.C. § 12102(2). Before turning to a legal analysis of the motion to dismiss, the court must first identify the standards for disposition of a motion to dismiss, as well as the factual background of this case as set forth in the complaint.

B. Factual Background

The factual background for disposition of these motions is based entirely on the facts as alleged in Simpson's Second Amended Complaint. According to the Second Amended Complaint, plaintiff Simpson began working for defendants as a registered nurse in 1986. Simpson was injured in an automobile accident which resulted in periodic medical problems and pain. Dr. Bryce Robinson worked for defendants at the same time as Simpson. Dr. Robinson treated Simpson and prescribed for her a painkiller medication. Simpson later raised her concerns with Dr. Robinson about her increasing dependence on the painkiller medication. Dr. Robinson assured Simpson that the painkiller medication prescribed for her was appropriate. Dr. Robinson and other employees of defendants authorized refills for the painkiller medication that Simpson was taking and Simpson had the prescription refilled several times. In March 1999, Simpson had surgery to remove bone spurs on her ribs. It was later learned that Simpson's ribs had been fractured during the surgery to remove the bone spurs.

On December 3, 1999, Simpson was informed by the office manager, Joe Norton, that the hospital wanted to suspend her because they believed that she was addicted to

painkiller medication. Norton arranged for Simpson to take short-term disability leave. Simpson contacted Gordon Recovery, an addiction treatment center, to get an assessment of her condition. On December 10, 1999, Simpson met with defendants' employees Gary Johnson, Human Resources Director, Wendy Van Hatten, Director of the Grandview Clinic, and Norton regarding the hospital's investigation. Simpson received a telephone call from Van Hatten in which she requested Simpson meet with the investigator. Simpson asked Van Hatten if she would call back because Simpson was feeling sick from the treatment she had received for her addiction. Although Van Hatten agreed to call back later when Simpson was not ill, Van Hatten never called back. On December 22, 1999, Simpson received a letter from Van Hatten that falsely stated that Simpson was refusing to meet with the investigator. The letter requested that Simpson contact Van Hatten immediately if Simpson was not refusing to meet with the investigator. In response to the letter, Simpson telephoned Van Hatten and left messages for her. Simpson's telephone calls to Van Hatten were not returned. On January 4, 2000, defendants fired Simpson.

It is alleged in the Second Amended Complaint that plaintiff Simpson was disabled because she "suffered from Opioid dependence" and that "she had chronic pain described as intercostal neuralgia." Second Amended Compl. at ¶¶ 39, 41.

II. LEGAL ANALYSIS

A. Standards For Rule 12(b)(6) Motions To Dismiss

A motion to dismiss may be made, *inter alia*, for "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) requires the court to review only the pleadings to determine whether the pleadings state a claim upon which relief can be granted. FED. R. CIV. P.

12(b).[1] Such motions "can serve a useful purpose in disposing of legal issues with the minimum of time and expense to the interested parties." *Hiland Dairy, Inc. v. Kroger Co.*, 402 F.2d 968, 973 (8th Cir. 1968), *cert. denied*, 395 U.S. 961 (1969). The issue is not whether a plaintiff will ultimately prevail, but rather whether the plaintiff is entitled to offer evidence in support of the plaintiff's claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *United States v. Aceto Agric. Chem. Corp.*, 872 F.2d 1373, 1376 (8th Cir. 1989).

In considering a motion to dismiss under Rule 12(b)(6), the court must assume that all facts alleged in the plaintiff's complaint are true, and must liberally construe those allegations. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Doe v. Norwest Bank Minnesota, N.A.*, 107 F.3d 1297, 1303-04 (8th Cir. 1997) ("In considering a motion to dismiss, we assume all facts in the complaint are true, construe the complaint in the light most favorable to the plaintiff, and affirm the dismissal only if 'it appears beyond a doubt that the plaintiff

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[1]However, where on a Rule 12(b)(6) motion to dismiss "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." FED. R. CIV. P. 12(b)(6); *see also Buck v. F.D.I.C.*, 75 F.3d 1285, 1288 & n.3 (8th Cir. 1996) (because the district court relied on matters outside the complaint in ruling on a Rule 12(b)(6) motion, "the district court had to treat the [defendant's] motion to dismiss as a motion for summary judgment and apply the relevant standards for summary judgment," and further noting that "[t]he standards for dismissing a complaint under Rule 12(b)(6) are substantially different" from those applicable to a Rule 56 summary judgment motion; therefore it was inappropriate for the district court to fail to specify whether it was disposing of an issue according to summary judgment or Rule 12(b)(6) standards). Even where matters outside of the pleadings are presented to the court, however, a motion to dismiss is not converted into a motion for summary judgment "where the district court's order makes clear that the judge ruled only on the motion to dismiss." *Skyberg v. United Food and Commercial Workers Int'l Union, AFL-CIO*, 5 F.3d 297, 302 n.2 (8th Cir. 1993). Where the district court has made the posture of its disposition clear, the appellate court will "treat the case as being in that posture." *Id.* No other materials have been offered in support of the motion to dismiss in this case. Therefore, the motion to dismiss will not be disposed of as provided in Rule 56, but only according to the standards stated herein.

can prove no set of facts which would entitle the plaintiff to relief,'" quoting *Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir. 1994)); *WMX Techs., Inc. v. Gasconade County, Mo.*, 105 F.3d 1195, 1198 (8th Cir. 1997) ("In considering a motion to dismiss, the court must construe the complaint liberally and assume all factual allegations to be true."); *First Commercial Trust Co., N.A. v. Colt's Mfg. Co.*, 77 F.3d 1081, 1083 (8th Cir. 1996) (same).

The court is mindful that in treating the factual allegations of a complaint as true pursuant to Rule 12(b)(6), the court must "reject conclusory allegations of law and unwarranted inferences." *Silver v. H & R Block, Inc.*, 105 F.3d 394, 397 (8th Cir. 1997) (citing *In re Syntex Corp. Securities Lit.*, 95 F.3d 922, 926 (9th Cir. 1996)); *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990) (the court "do[es] not, however, blindly accept the legal conclusions drawn by the pleader from the facts," citing *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987), and 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357, at 595-97 (1969)); *see also LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1103 (6th Cir. 1995) (the court "need not accept as true legal conclusions or unwarranted factual inferences," quoting *Morgan*, 829 F.2d at 12). Conclusory allegations need not and will not be taken as true; rather, the court will consider whether the *facts* alleged in the complaint, accepted as true, are sufficient to state a claim upon which relief can be granted. *Silver*, 105 F.3d at 397; *Westcott*, 901 F.2d at 1488.

The United States Supreme Court and the Eighth Circuit Court of Appeals have both observed that "a court should grant the motion and dismiss the action 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen v. Lemaire*, 112 F.3d 1339, 1347 (8th Cir. 1997) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)); *accord Conley*, 355 U.S. at 45-46 ("A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would

entitle him [or her] to relief."); *Doe*, 107 F.3d at 1304 (dismissal is appropriate only if "'it appears beyond doubt that the plaintiff can prove no set of facts which would entitle the plaintiff to relief,'" quoting *Coleman*, 40 F.3d at 258); *WMX Techs., Inc.*, 105 F.3d at 1198 ("Dismissal should not be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts that would entitle relief," citing *Conley*, 355 U.S. at 45-46). The Rule does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). Thus, "[a] motion to dismiss should be granted as a practical matter only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995) (internal quotations omitted).

B. Analysis Of Claims

The ADA provides that "[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to . . . discharge of employees. . . ." 42 U.S.C. § 12112(a). A plaintiff bringing a claim of discriminatory discharge under the ADA bears the initial burden of establishing a *prima facie* case of discrimination.[2] To meet this burden, a plaintiff must show that: "(1) he was disabled within the meaning of the ADA; (2) he was qualified to perform the essential functions of his job, with or without reasonable accommodation; and (3) he suffered an adverse employment action because of his disability." *Lane v. BFI Waste Sys. of N. Am.*,

[2]Though Simpson brings her claim for disability discrimination under both the ADA and the ICRA, the court will only discuss Simpson's ADA claim because the analysis is the same under both the ADA and the ICRA. *See Brunko v. Mercy Hosp.*, __F.3d__, 2001 WL 913991, at *1 (8th Cir. Aug. 15, 2001) ("Disability claims under the ICRA are analyzed in accordance with federal standards.") (citing *Helfter v. United Parcel Serv., Inc.*, 115 F.3d 613, 616 (8th Cir. 1997).

__ F.3d __, 2001 WL 793152, at *2 (8th Cir. July 16, 2001); *accord Sprenger v. Federal Home Loan Bank of Des Moines*, 253 F.3d 1106, 1113 (8th Cir. 2001); *Taylor v. Nimock's Oil Co.*, 214 F.3d 957, 959-60 (8th Cir. 2000); *Allen v. Interior Constr. Serv., Ltd.*, 214 F.3d 978, 981 (8th Cir. 2000). The ADA describes an individual as suffering from a "disability" if she makes a showing of any one of the following: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2).

In their brief in support of their motion to dismiss, defendants assert that Simpson has failed to "plead any specific impairment which she suffered or was perceived to suffer." Defendants' Br. at p. 1. This assertion is erroneous, as Simpson specifically alleges in her Second Amended Complaint that she was disabled because she "suffered from Opioid dependence" and that "she had chronic pain described as intercostal neuralgia."[3]

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[3] Defendants do not dispute that drug addiction may be a disability under the ADA. Nor do defendants contend that Simpson was not a "qualified individual with a disability" under the ADA. *See* 42 U.S.C.A. § 12114. Section 12114 reads in part:

> **Illegal use of drugs and alcohol**.
>
> **(a) Qualified individual with a disability**
>
> For purposes of this subchapter, the "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.
>
> **(b) Rules of Construction**
>
> Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who--
>
> (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(continued…)

Second Amended Compl. at ¶¶ 39, 41. Therefore, this portion of defendants' motion to dismiss is denied.[4]

Defendants further assert that Simpson has "also failed to plead how such alleged impairment substantially limited or was perceived to be a substantially [sic] limit any major life activity."

Courts have differed over the pleading requirements for an ADA claim. In *Buckley v. Consolidated Edison Co. of New York, Inc.*, 908 F. Supp. 217, 219 (S.D.N.Y. 1995), the court dismissed the plaintiff's complaint for failing to allege other than in a "conclusory manner" that a "'neurogenic bladder' is a disability under the ADA, i.e., a physical or mental impairment that substantially limits one or more of his major life activities." *Id.* Similarly, in *Fedor v. Illinois Dep't of Employment Security*, 955 F. Supp. 891, 893 (N.D. Ill. 1996), the court dismissed the plaintiff's complaint because he "never states that his impairment substantially limits a major life activity such as working, which he must do to plead disability discrimination under the ADA." *Id.* Likewise, in *Parisi v. The Coca-Cola Bottling Co. of New York*, 995 F. Supp. 298, 302 (E.D.N.Y. 1998), the court required that the plaintiff "allege a factual basis that would support a finding of 'substantial limitation of

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[3](…continued)

> (2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or
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> (3) is erroneously regarded as engaging in such use, but is not engaging in such use; except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

[4]The court notes that these allegations were not included in Simpson's Amended Complaint and that defendants apparently failed to take these new allegations into account when they filed their motion to dismiss.

a major life activity,' and may not rely upon conclusory allegations of such a limitation." *Id.* at 302.

In contrast, other courts have accepted more conclusory claims. For example, the Seventh Circuit Court of Appeals, considering one pleading of disability, concluded as follows:

> The district court recognized that Homeyer's complaint alleged that her physical condition (chronic severe allergic rhinitis and sinusitis) substantially impaired her ability to breathe and that her condition, when aggravated by ETS, substantially limited her ability to work. With these allegations, it would seem that under the liberal federal notice pleading standards, Homeyer sufficiently pled the initial elements of an ADA claim, i.e., that she suffers from a "disability" as defined in the Act. Homeyer was not required to plead facts or evidence to support her allegations; she was not even required to include a theory of the case. Her complaint was clear enough to inform STA of her claim.

Homeyer v. Stanley Tulchin Assocs., Inc., 91 F.3d 959, 961 (7th Cir. 1996); *see also McKay v. Town and Country Cadillac, Inc.*, 991 F. Supp. 966, 969 & 970 (N.D. Ill. 1997) (holding that a plaintiff may allege factual conclusions that he or she is disabled, as long as the pleadings provide notice of the claim, citing *Homeyer* and *Jackson v. Marion County*, 66 F.3d 151, 154 (7th Cir.1995)).

In *Adler v. I & M Rail Link, L.L.C.*, 13 F. Supp.2d 912, 938 (N.D. Iowa 1998), *abrogated in part on other grounds sub nom. Cossette v. Minnesota Power & Light*, 188 F.3d 964, 970 (8th Cir. 1999), this court observed that the confusion among the courts about the pleading requirements for an ADA disability claim stems in part from the fact that "disability" as defined under the ADA is a "legal conclusion drawn from facts, not a purely 'legal' or 'factual' conclusion." *Id.* Therefore, the court concluded that it is "*not* sufficient for a plaintiff to plead simply that he or she was 'disabled within the meaning of the ADA,'

without also pleading some factual basis from which inferences supporting this legal conclusion can be drawn." *Id.*

Here, Simpson's complaint states that she is an individual with disabilities or is an individual who is perceived as having disabilities within the meaning of the ADA. Second Amended Compl. at ¶ 38. In the Second Amended Complaint, Simpson alleged that she was disabled because she "suffered from Opioid dependence" and that "she had chronic pain described as intercostal neuralgia." Second Amended Compl. at ¶¶ 39, 41. Although Simpson does not explicitly identify what major life activity has been substantially limited by these disabilities, she does allege that defendants sought to suspend her "because they believed she was addicted to painkillers." Second Amended Compl. at ¶ 27. She further alleges that she was "forced to take short term disability leave." Second Amended Compl. at ¶ 26. Thus, it can reasonably be inferred from the pleadings that defendants perceived Simpson's disabilities as substantially limiting her ability to work in the medical field. Work is a major life activity under the ADA. *Brunko*, __F.3d__, 2001 WL 913991, at *1("'Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, as well as sitting, standing, lifting, and reaching.'") (quoting *Cooper v. Olin Corp, Winchester Div.*, 246 F.3d 1083, 1088 (8th Cir. 2001)); *Taylor v. Southwestern Bell Tel. Co.*, 251 F.3d 735, 739 (8th Cir. 2001) ("Examples of major life activities are caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."); *Maziark v. Mills Fleet Farm, Inc.*, 245 F.3d 675, 679 (8th Cir. 2001) ("Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and working, 29 C.F.R. § 1630.2(i), as well as sitting, standing, lifting, and reaching."); *Fjellestad v. Pizza Hut of Am., Inc.*, 188 F.3d 944, 948 (8th Cir. 1999) (" Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning and working."). Thus, the court concludes that Simpson has pleaded a

factual basis from which inferences supporting the legal conclusion that she is disabled or perceived as being disabled may be drawn under the "liberal system of 'notice pleading' set up by the Federal Rules," *Kohl v. Casson*, 5 F.3d 1141, 1148 (8th Cir. 1993) (quoting *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993)). Therefore, defendants' motion to dismiss is denied.

IV. CONCLUSION

The court concludes that plaintiff Simpson has adequately pleaded a disability within the meaning of the ADA. Although Simpson has not explicitly pleaded what major life activity has been substantially limited by her alleged disabilities, the court concludes that Simpson has pleaded a factual basis from which inferences supporting the legal conclusion that she is disabled or perceived as being disabled may be drawn. Therefore, defendants' motion to dismiss is denied.

IT IS SO ORDERED.

DATED this 22nd day of August, 2001.

Mark W. Bennett

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA